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Police Interactions with Deaf Persons

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Introduction

Police frequently encounter persons with moderate to profound hearing loss while carrying out their law enforcement duties. It has been estimated that 2 to 4 out of every 1,000 people in the U.S. are “functionally deaf,” that if people with a severe hearing impairment are included with those who are deaf, anywhere from 9 to 22 out of every 1,000 people is included, and that if everyone with some sort of “trouble” with hearing is included, this includes from 37 to 140 out of every 1,000 people. Plainly, this includes a significant portion of the community, and hearing difficulties are especially prevalent among the elderly, already a particularly vulnerable segment of the community.

Deaf persons may be criminal suspects, arrestees, crime victims, persons in need of assistance, or witnesses. Difficult issues may arise concerning communication, often in tense situations. Did the suspect disobey the officer’s command or did he simply not hear it, or not hear it well enough to understand it? Will their failure to hear be mistaken for intentional defiance? Will the crime victim, person in need of assistance, or witness be able to adequately communicate with the officer on the scene or the 911 dispatcher? Will they be able to receive and follow information or directions that may be essential for their safety and lives?

The following article briefly examines court decisions and other legal materials that have addressed claims that officers and departments have failed to adequately address the need to accommodate deaf persons, and have therefore engaged in disability discrimination in violation of federal and state law. At the conclusion of the article, some useful resources on this issue are listed. The article does not attempt to address this issue in the context of jails and prisons.

Encounters With Deaf Suspects and Arrestees

Deaf individuals have pursued disability discrimination claims against law enforcement on the theory that they were intentionally discriminated against on account of their deafness, during investigative encounters, during and after arrest, or in the context of the use of force against them by police.

In [Pyle v. Victoria County, Texas](#), #00-41038, 302 F.3d 567 (5th Cir. 2002), Rehearing, en banc, denied by [Delano-Pyle v. Victoria County](#), 54 Fed. Appx. 415 (5th Cir. Tex. 2002), cert. denied, [Victoria County v. Pyle](#), 540 U.S. 810 (2003), a federal appeals court upheld a \$230,000 disability discrimination award to a severely hearing-impaired arrestee for a county's failure to take his disability into account during the process of arresting him for driving while intoxicated.

In this case, a Texas motorist, who is severely hearing-impaired, was involved in a car accident when he rear-ended another vehicle traveling on the shoulder of a highway. Two deputies arrived at the scene of the accident in response to a report of an "incoherent subject" at the location. Shortly after they arrived, the motorist informed them of his hearing disability.

Despite this knowledge, one of the deputies allegedly proceeded to administer three sobriety tests without asking the motorist which form of communication would be effective for him. Prior to administering the tests, one of the deputies turned on the video camera in his patrol car, which was standard procedure when an officer suspects that there may be a need for an arrest. The tests administered included a "walk and turn" test, a "one-leg stand" test, and a "finger-to-nose" test.

According to the plaintiff, after the deputy demonstrated the "walk and turn" test for him, he performed the task as demonstrated, but the deputy had his back turned to the plaintiff while giving instructions. Because he could not understand the instructions as communicated, he took more than the required nine steps before turning around and returning to the starting point.

The deputy allegedly demonstrated the one-leg stand test, but spoke very quickly while giving instructions. As a result, while the plaintiff was able to complete the task as demonstrated, he counted to fourteen, rather than ten, while doing so.

On the "finger-to-nose" test, the deputy requested that the plaintiff touch his nose six times, and the plaintiff performed the task as demonstrated, but due to his failure to understand the deputy's instructions, he touched his nose approximately twenty-five times. The deputy then concluded that the motorist was unable to complete the tests as instructed, and arrested him for driving while intoxicated.

The motorist contended that he did not understand the instructions given, and would have been able to perform the tests as requested if he had. Prior to arresting the motorist, the deputy read him his [Miranda](#) warnings, but the plaintiff did not respond when asked if he understood his rights.

At the police station, the deputy read the motorist his rights again, and wrote the [Miranda](#) warnings on a blackboard. Despite knowledge that the arrestee was hearing-impaired and may not have understood his verbal communications, the deputy "nonetheless interrogated him without any accommodations to ensure that" he understood the circumstances of his arrest. The deputy allegedly asked the arrestee six times to take a blood test before he consented to do so. After passing the blood test, the motorist was released.

His lawsuit alleged violations of Title II of the Americans with Disabilities Act (ADA), [42 U.S.C. Sec. 12132](#) et seq. and Section 504 of the Rehabilitation Act, [29 U.S.C. Sec. 794](#), as well as disability discrimination under Texas state law, [Texas Human Resources Code chapter 121](#), and seeking damages under [42 U.S.C. Sec. 1983](#). The trial court granted the county's motion for judgment as a matter of law on the Sec. 1983 claims for denial of medical attention and unauthorized medical testing, but denied it on the other claims for disability discrimination, finding that a factual issue existed as to whether there was intentional discrimination or deliberate indifference in the county's treatment of the plaintiff.

The jury specifically found that the plaintiff, by reason of his hearing disability, was excluded from participation in, or denied the benefits of, the services, programs, or activities of a public entity, or otherwise subjected to discrimination by the county, that the county's conduct was intentional, and that the county's exclusion, denial or discrimination against the plaintiff proximately caused damages, awarded \$230,000.

The federal appeals court upheld the award. It further ruled that the arrestee did not have to prove that the deputy who arrested him was a "policymaker" and was not required to

prove that the county had a "policy" of discrimination. Additionally, it found that the evidence was sufficient to support the jury's finding that the discrimination was intentional.

The court reasoned that Congress intended to impose an affirmative duty on public entities to create policies or procedures to prevent discrimination based on disability, and therefore, while federal civil rights claims against municipalities under Sec. 1983 require a showing of an official policy, that same rule does not apply to claims against a municipality for violation of the ADA and Rehabilitation Act.

The court also ruled that the plaintiff was not required to show "deliberate indifference," but did have to show "intentional discrimination." In this case, the court found that it was clear from the videotape of the incident that no matter how many times the deputy repeated himself, and no matter how loudly he spoke, the motorist could not understand most of what he was saying.

Further, instead of viewing the motorist's actions, such as starting the tests early after the deputy told him not to start yet until he was finished demonstrating, as an indication that verbal commands were not effective, the deputy only "became annoyed" and continued to instruct the motorist through verbal communications. He did not try to find a more effective form of communication.

One of the deputies, in his testimony, admitted that he did not know whether the arrestee understood his rights as verbally communicated.

After a thorough review of the record, the appeals court concluded, "we cannot conclude" that the jury was "plainly erroneous" in finding that the plaintiff sustained a claim for disability discrimination against the county.

Similarly, in Lewis v. Truitt, #96-C-0411, 960 F. Supp. 175 (S.D. Ind. 1997), a federal court held that an arrestee could recover damages for disability discrimination against officers if they knew he was deaf but refused to attempt to communicate with him in a way he could understand (in writing), and then arrested him for failure to obey verbal commands that he could not hear and understand. The case involved a deaf man who was beaten and arrested for resisting law enforcement personnel after they entered his home without a warrant to remove his granddaughter in a custody dispute.

He sued the officers and the city, claiming violations of the ADA and 42 U.S.C. Sec. 1983. The court stated that he was entitled to know why the officers were there and by what authority. It ruled that a genuine issue of material fact existed as to whether he was arrested because of his disability. Denying summary judgment on the plaintiff's disability discrimination claim, the court reasoned that there could be liability for the officers'

actions if they knew or should have known that he was deaf yet refused to communicate with him and then arrested him because he did not respond appropriately.

In [Gonzales v. Pennsylvania](#), #07-2901, 2008 U.S. App. Lexis 13514 (Unpub. 3rd Cir.), a federal appeals court ruled that the state of Pennsylvania was not entitled to Eleventh Amendment immunity against claims asserted by a deaf mother and her deaf son contending that their rights under the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12131, and the Rehabilitation Act, 29 U.S.C. Sec. 794, were violated by the failure to provide them with a qualified sign language interpreter during their arrest or while they were incarcerated at a county prison. Congress abrogated any such immunity that the state might have in connection with these claims.

Investigative activity by police, including questioning of a deaf person at a police station was found, in [Calloway v. Glassboro Department of Police](#), #98-3139, 89 F.Supp.2d 543 (D.N.J. 2000), to constitute a program, service, or activity covered by federal disability discrimination laws prohibiting discrimination. This court ruled, however, that the individual defendants could not be held liable for violations of those laws, and that police department could not be held liable under 42 U.S.C. § 1983 in the absence of a showing that any discrimination that occurred was the result of an official custom or policy.

The court also ruled that there was no private cause of action for damages for violation of a New Jersey statute which provides for appropriate assistance to deaf persons in certain legal settings, that the plaintiff was not falsely imprisoned, and that an interpreter used during the questioning was not liable for alleged negligence.

Taking a different point of view, the court in [Patrice v. Murphy](#), #C97-0068, 43 F. Supp. 2d 1156 (W.D. Wash. 1999) argued that an arrest, and the acts leading up to it, were not a service, program or activity and therefore were not covered by the ADA. The plaintiff, a deaf arrestee, sought injunctive and declaratory relief alleging violations of Title II of the ADA as well as a state discrimination statute. She claimed that the arresting officers improperly failed to provide a sign language interpreter at the time of her arrest. The officers came to her home on a domestic violence complaint. The court granted summary judgment to the defendants, and noted that the plaintiff could read and write well. Accordingly, while the court found no ADA coverage, if there were, adequate accommodation was provided through the use of written materials. The court did state that a disability discrimination claim may exist if an arrest was made because of a disability, but in this case, the officers did not arrest the woman because of her disability, but because they had probable cause to believe she had committed an offense.

Also rejecting liability on a claim of disability discrimination, the court in [Vincent v. Town of Scarborough](#), #02-239, 2003 U.S. Dist. Lexis 20910; confirmed, 2003 U.S. Dist. Lexis 22934 (D. Me. 2003) ruled that police officers' actions in shooting and killing a deaf man armed with a rifle in a parking lot who intended to protest discriminatory treatment of disabled people did not constitute disability discrimination under the Americans with Disabilities Act (ADA). In this case, a deaf man with a history of psychiatric problems showed up in a parking lot in a large public shopping plaza in the middle of the day armed with a high-powered rifle, intending to stage a protest over the treatment of the disabled. Police officers arrived on the scene and surrounded him and sought to get him to drop his weapon, which he refused to do.

The standoff continued for a while and the officers ultimately shot and killed the man. A federal civil rights lawsuit on the incident asserted a number of claims, including the assertion that this was excessive use of force. One of the claims was that the officers' conduct constituted disability discrimination because of the decedent's audio disability. The plaintiffs argued that the officers had a duty under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132, to reasonably accommodate the man's deafness in order to be able to communicate with him, and argued that the failure to have one or more officers trained and proficient in [American Sign Language \(ASL\)](#) would have altered the outcome of the incident.

The magistrate, whose report the trial court adopted, found that what a police chief did in permitting a number of officers to surround the man with their weapons drawn was objectively reasonable under the circumstances.

The plaintiffs argued that the man was "staging a peaceful and lawful protest," since his rifle was shouldered, its muzzle pointing skyward, and he signaled in gestures and words that he did not intend to hurt the officers. The court noted, however, that the man was armed with a high-powered rifle capable of striking someone inside one of the stores in the plaza or an object as far away as a nearby highway. "No one could predict" his actions, the court stated, and no one could know whether he would "decide to fire his weapon or even accidentally discharge it." Accordingly, whatever his "subjective intentions," his conduct was "provocative, and the situation inherently posed an appreciable public safety risk."

The officers shot and killed the man because of his actions and the risk to the officers and others because of his possession of the weapon and refusal to relinquish it, not because of his disability of deafness, the court found.

The court found no duty on the part of the officers to "reasonably accommodate" the decedent's hearing disability during the standoff. No reasonable fact-finder, the court stated, could find that the area had been secured and that the threat to human life had ended

at any point prior to the end of the standoff. While the ADA was passed to prevent discrimination against disabled individuals, Congress did not intend that the fulfillment of that goal be achieved at the "expense of the safety of the general public."

In [Tucker v. Tennessee](#), #06-6208, 539 F.3d 526 (6th Cir. 2008), two arrestees and a relative, all of whom are deaf and mute, sued a police department and a county, claiming that officers who carried out the arrest after a domestic disturbance call and the county violated their rights under the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12101 et seq. by failing to provide them with a sign language interpreter during the arrest, at an initial appearance, and at a dispositional hearing, as well as in failing to give them access to a teletypewriter phone during their detention.

The court rejected these claims, noting that the two arrestees were taken into custody not because they were disabled but because they assaulted the officers, and other individuals, or attempted to interfere with a lawful arrest. The defendants did not intentionally discriminate against the plaintiffs on the basis of their disability, and the relay operators and written communications provided were reasonable accommodations under the circumstances, permitting them a means of effective communication. Further, one of the arrestees voluntarily served as an interpreter at a hearing on the other arrestee's criminal charges. The arrest, the court also reasoned, did not constitute a "service, activity, or program" to which the protections of the ADA applied.

Some other cases of interest include:

* [Bircoll v. Miami-Dade County](#), #06-11098, 480 F.3d 1072 (11th Cir. 2007), finding that the failure to provide an interpreter during a drunk driving arrest of a deaf arrestee was not disability discrimination. It was not a reasonable modification of normal procedures to wait for an oral interpreter before making a deaf motorist take field sobriety tests. The arrestee was able to read lips and did respond to the officer's directions. The court found that effective communications between the officer and arrestee was established.

* [Kennington v. Carter](#), #02-0648, 216 F. Supp. 2d 856 (S.D. Ind. 2002), holding that a deaf arrestee could not recover damages against "unnamed" or "John Doe" officer defendants for alleged violation of Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12101 et seq., in connection with failure to attempt to communicate with him during his arrest through "auxiliary aids and services." No claims for damages may be brought under Title II against defendants in their individual capacities. The case later

settled for a \$5,000 amount against the sheriff's office, as reported at 2005 U.S. Dist. Lexis 8668.

* [Robertson v. Las Animas County Sheriff's Dept.](#), #06-1027, 500 F.3d 1185 (10th Cir. 2007), in which further proceedings were ordered on whether the arrestee, who was deaf, was subjected to violation of his rights under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132 following his arrest.

* [Rosen v. Montgomery County Maryland](#), #96-1833, 121 F.3d 154 (4th Cir. 1997), ruling that a deaf motorist who failed field sobriety, breath test and chemical test could not sue for disability discrimination based on the failure of a county to provide "auxiliary aids and services" for communicating with deaf arrestees, since the plaintiff failed to allege any injury resulting from this failure.

* [Koth v. City of Pasadena](#), Cal., Los Angeles County Super. Ct., #C 698 065 (1992), 35 ATLA L. Rep. 329 (Nov. 1992), in which a deaf man mistakenly arrested as a bank robber was awarded \$100,000 because of a city's alleged negligence in failing to provide him with a sign language interpreter after his arrest.

Communicating With Deaf Crime Victims or Persons in Need of Assistance

Whatever the controversy over whether or not police involved in interrogating a suspect or making an arrest are providing a "service or program" to the suspect or arrestee, on which some courts have differed, there is no doubt that in providing police services to the community, to crime victims and persons in need of assistance, police departments are covered by federal disability discrimination laws, and must reasonably accommodate the disabled, including deaf members of the public.

Under the Americans with Disabilities Act, local and state agencies are required to give equal access and equally effective services to people with disabilities. 28 C.F.R. 35.130. They may not deny people an opportunity to participate in their programs, or give them an opportunity that is less effective than the opportunity given to others. This may require a police department to provide qualified interpreters, TTYs, visible warning devices, or captioned materials and other auxiliary aids to ensure effective communication with deaf and hard of hearing people. A U.S. Department of Justice regulation states:

- (a) A public entity shall take appropriate steps to ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.

(b)(1) A public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

(2) In determining what type of auxiliary aid and service is necessary, a public entity shall give primary consideration to the requests of the individual with disabilities.

28 C.F.R. Sec. 35.160

The Justice Department has, in a number of instances, pursued complaints against police departments and other municipal agencies for alleged failure to comply with this obligation. A number of settlements have been reached as a result of these investigations, in which the departments and agencies have promised to correct alleged shortcomings in this area. The following are a few such settlements:

- [Elk Grove Village Police Department, Elk Grove, Illinois](#) - re: failure to provide auxiliary aids and services (signed October 28, 2008)
- [Consolidated City of Jacksonville, Florida](#) - re: effective communication in police situations (signed September 27, 2007)
- [Franklin Police Department, Louisiana](#) - re: accessibility of 9-1-1 services to persons with communications disabilities (signed August 25, 2004)
- [Washington Parish Communications District, Louisiana](#) - re: accessibility of 9-1-1 services to persons with communications disabilities (signed August 11, 2004)
- [City of Houston, Texas.](#) - re: police, city jail and municipal courts providing effective communication with people who are deaf or hard-of-hearing (posted March 31, 2000)

Some court decisions have also examined this issue.

In [Center v. City of West Carrollton](#), #3-00-449, 227 F. Supp. 2d 863 (S.D. Ohio 2002), the court ruled that a hearing-impaired criminal complainant could pursue disability discrimination claim under the Americans with Disabilities Act (ADA), 42 U.S.C. Sec. 12132 et seq. against city based on an allegation that an officer acted with deliberate indifference towards her hearing disability in refusing to provide her with a qualified interpreter during a discussion concerning the crime, despite her repeated request to do so.

In [Ferguson v. City of Phoenix](#), #96-17350, 157 F.3d 668 (9th Cir. 1998), cert denied, 526 U.S. 1159 (1999), the court held that a city could not be held liable for damages for defects in a 911 system which made it more difficult for deaf persons to make emergency calls in the absence of a showing of intent to discriminate on the basis of disability.

In [Burrhart v. Washington Metropolitan Area Transit Authority](#), #96-7163, 112 F.3d 1207 (D.C. Cir. 1997), a federal appeals court overturned a \$50,000 disability discrimination award to a deaf passenger based in part on a transit police officer's alleged refusal to supply an interpreter. The officer instead communicated by writing notes.

Resources

The following are some useful resources on law enforcement interaction with deaf persons. They are provided for informational purposes only, and inclusion here does not imply endorsement of viewpoints expressed.

- [Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers](#) - An 8-panel pocket guide from the Justice Department.
- [Model Policy for Law Enforcement on Communicating with People Who Are Deaf or Hard of Hearing](#) - This 4-page document from the Justice Department Office of Civil Rights "serves as a model for law enforcement agencies when adopting a policy on effective communication with people who are deaf or hard of hearing. Agencies are encouraged to download and adapt the policy to suit their needs."
- IACP Model Policy No. 94, Deaf and Hearing Impaired (July 2003).
- Arlington County, Virginia Police Department Directives Manual Sec. 523.07 -- [Communicating with Deaf and Hearing Impaired Persons](#).
- Charlotte-Mecklenburg, North Carolina Police Department Directives Manual: [Interpreting for the Deaf and Hard of Hearing](#).
- Cincinnati, Ohio Police Department General Orders Sec. 18.103 [Communication with People Who are Deaf or Hard of Hearing and Use of Foreign Language Interpreters](#).
- Las Vegas, Nevada Metropolitan Police Department Policy Manual Sec. 5/107.01 [Interaction with the Hearing Impaired](#).
- Pacific Grove, California Police Department Policies and Procedures: [Communications with Persons with Hearing Impairments](#).
- [Police Response to People with Disabilities, Eight-Part Series](#) - Designed for use in roll-call training, this videotape addresses law enforcement situations involving people who have mobility disabilities, mental illnesses, mental retardation, epilepsy or seizure disorders, speech disabilities, deafness or are hard of hearing, and blindness or low vision. The videos can be accessed or [ordered](#) online.

- [Title II of the Americans with Disabilities Act: The Potential for Police Liability and Ways to Avoid It](#), Police Chief (Sep. 2006).
- [Peace Officer Training and the Deaf](#) by David Birozy, Nov. 17, 2007.
- [Substance Abuse and the Deaf/HH Community](#), by Tracy Bell Koster, MSW, MS and Debra Guthmann, Ed.D
- [Understanding the Needs of the Victims of Sexual Assault in the Deaf Community](#), by Jennifer Obinna; Sarah Krueger; Constance Osterbaan; Jane M. Sadusky; Wendy DeVore (Feb. 2006).
- Sheprow, Glenn J. “[Interpreting for the Miranda Warnings](#).” American Sign Language Interpreting Resources, December 10, 1999.
- [National Association of the Deaf](#) position statement on [Communication Access by Law Enforcement Personnel](#).
- Wikipedia article: [Hearing Impairment](#).

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